

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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|-------------------------------------|---|-------------------------|
| New England Conference of |) | |
| Public Utility Commissioners |) | |
| |) | |
| v. |) | Docket No. EL-08-69-000 |
| |) | |
| Bangor Hydro-Electric Company |) | |
| Central Maine Power Company |) | |
| National Grid, USA |) | |
| NSTAR Electric & Gas Corporation |) | |
| Northeast Utilities Service Company |) | |
| The United Illuminating Company |) | |
| Vermont Electric Power Company |) | |

**NOTICE OF INTERVENTION OF
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214(a)(2), and the Commission’s Notice of Complaint dated April 1, 2008, the Department of Public Utilities of the Commonwealth of Massachusetts (“Mass DPU”) hereby files its Notice of Intervention in the above-captioned proceeding. This proceeding relates to a complaint filed by New England Conference of Public Utilities Commissioners (“NECPUC”) against Bangor Hydro-Electric Company, Central Maine Power Company, National Grid, USA, NSTAR Electric & Gas Corporation, Northeast Utilities Service Company, The United Illuminating Company, Vermont Electric Power Company, collectively the New England Transmission Owners (“NETOs”)(the “Complaint”) .

NECPUC's complaint provides new information which shows that substantial post-Order No. 489¹ increases in the estimated costs of many projects qualifying for the 100 basis point return on equity adder ("ROE Adder"), have rendered the unqualified application of the ROE Adder to all transmission qualified projects, unjust and unreasonable.²

I. COMMUNICATIONS

The Mass DPU requests that the individual identified below be placed on the Commission's official service list in this proceeding and that all communications concerning this filing and future filings in this proceeding should be directed to:

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II. INTERVENTION

The Mass DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to

¹ Bangor-Hydro Electric Co., et al., 117 FERC ¶ 61,129 (2006)("Opinion No. 489").

² All projects identified by ISO New England in its regional planning process for 2004, *i.e.*, RTEP 2004, qualify for the ROE Adder, provided that the facilities have been placed into service by the end of 2008. *See* Opinion No. 489 at P 121 and *Bangor-Hydro Electric Co., et al.*, 122 FERC ¶ 61,265 (2008)("Rehearing Order") at P 51.

consumers. Massachusetts General Laws c. 164, § 76 et seq.

Therefore, the Mass DPU is a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, the Mass DPU may intervene in this proceeding pursuant to Rule 214(a)(2).

The commissioners of the Mass DPU are also members of the Board of Directors of NECPUC.

III. COMMENTS

The Energy Policy Act of 2005 (“EPAct”) directed the Commission to establish incentive-based rate treatments “for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing congestion.”³ Accordingly, the purpose of the ROE Adder is to provide an incentive, (i.e., to incite) transmission infrastructure investment that would achieve this purpose.⁴ In New England, the NETOs are already obligated to construct any new transmission infrastructure designated by ISO New England, Inc. (“ISO-NE”) as “necessary and appropriate for system reliability or economic efficiency.”⁵ For this and other reasons we will not elaborate on here, many, including the Mass DPU doubt that the ROE Adder provides any real incentive to encourage new transmission infrastructure, and accordingly have challenged the justness and reasonableness of

³ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 315 and 1283 (2005).

⁴ See Opinion No. 489 at P 2 and FERC Stats. & Regs, ¶ 31,222 (2006)(“Order No. 679”) at P 1.

⁵ See Transmission Operating Agreement, Schedule 3.09(a) § 1.1(a).

applying the ROE Adder at all.⁶ Nonetheless, even to the extent the ROE Adder may provide some additional incentive, application of the ROE Adder to overruns, provides no benefit to consumers.⁷

Cost overruns are by definition unanticipated. Accordingly, the NETOs could not have relied upon additional revenues provided by applying the ROE Adder to overruns as an incentive to pursue the transmission investments in question. Accordingly, applying the ROE Adder to these cost overruns serves no purpose but to increase rates without providing any real incentives to construct new transmission infrastructure and, therefore, provides no benefit to consumers. This is true whether or not there were valid reasons that cost estimates were understated or whether the additional costs were prudently incurred.⁸ Furthermore, as NECPUC notes, applying the ROE Adder to cost overruns not only does not provide any real incentive it may provide a perverse incentive by rewarding the NETOs for coming in over budget.⁹

⁶ The Connecticut Department of Public Utility Control (“CT DPUC”), NECPUC and other parties have sought judicial review of Opinion No. 489 challenging the justness and reasonableness of the ROE Adder. *Conn. Dep’t of Pub Util Control v. FERC*, No. 08-1199 (D.C. Cir., filed May 23, 2008). The Mass DPU supports the CT DPUC’s position in that review and has sought to intervene in that proceeding (See Motion to Intervene, filed June 23, 2008).

⁷ For purposes of this proceeding the Mass DPU accepts Opinion No. 489 (as modified in the Rehearing Order) as a given, subject to reversal on appeal, but should not be interpreted as a retreat from the Mass DPU’s position that the ROE Adder is unjustified and unreasonable.

⁸ For purposes of this proceeding, the Mass DPU is not suggesting that any cost estimates were either intentionally or negligently understated nor is the Mass DPU suggesting that any costs were not prudently incurred.

⁹ Complaint at 3, 5, 13.

The Commission's orders, both Opinion No. 489 and Order No. 679, require that there be a nexus between the incentives being requested and the investment being made, i.e., to demonstrate that the incentives are rationally related to the investments being proposed."¹⁰ However, there is no nexus between the investments being made and the application of the ROE Adder to cost overruns. Accordingly, the ROE Adder should not be applied to cost overruns.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Mass DPU respectfully requests that the Commission accept this Notice of Intervention, consider the Mass DPU's comments, and grant the relief requested by NECPUC's complaint.

Respectfully submitted,

MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: July 2, 2008

¹⁰ See Opinion No. 489 at P 105 and Order No. 679 at P 26.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each party on the official service list compiled by the Secretary in this proceeding in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010.

Dated at Boston, Massachusetts, this 2nd day of July, 2007.

/s/ John J. Keene, Jr.
John J. Keene, Jr.